

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT
DIVISION TWO

STATE OF MISSOURI,)	No. ED103837
)	
Respondent,)	
)	Appeal from the Circuit Court
)	of St. Louis County
vs.)	Cause No. 15SL-CR01326-01
)	
DAVID D. HIGHTOWER,)	Honorable Michael D. Burton
)	
Appellant.)	Filed: February 28, 2017

David D. Hightower (“Defendant”) appeals his conviction of one count of robbery in the first degree and one count of armed criminal action in violation of RSMo §§ 569.020 and 571.015 respectively.¹ Defendant received 18 years for the armed criminal action and 10 years for the robbery charge, with the sentences to run concurrently. Defendant alleges three points on appeal: (1) the trial court erred in finding testimony by the latent fingerprint examiner was admissible under the *Frye*² standard; (2) the trial court erred in overruling Defendant’s motion for judgment of acquittal because the State did not present sufficient evidence from which a rational trier of fact could have found Defendant guilty beyond a reasonable doubt; and (3) the trial court erred in not declaring a mistrial following inappropriate comments by the prosecutor during closing argument.

Holding: AFFIRMED.

Division Two Holds: The trial court did not err in finding the testimony of the latent fingerprint examiner admissible under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), because the ACE-V method is currently generally accepted by the scientific community. The court did not err in finding there was sufficient evidence for a jury to convict Defendant beyond a reasonable doubt of the crimes charged when there was testimony from two witnesses that Defendant banged his hands open-palmed on the victim’s car window, threatened to shoot victim with a loaded gun, removed her purse and iPad from the car, and two fingerprints collected from that window were identified as Defendant’s left middle and left ring fingers. Finally, the court did not plainly err in failing to declare a mistrial *sua sponte* following Defendant’s objections to the prosecutor’s statements during closing arguments. The court granted Defendant all the relief he requested by striking the statements from the record and instructing the jury to disregard the statements.

¹ All references are to Missouri Revised Statutes 2000.

² *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

Opinion by: Colleen Dolan, J.

Sherri B. Sullivan, P.J., and Roy L. Richter, J., concur.

Attorney for Appellant: Emmett D. Queener

Attorney for Respondent: Robert J. Bartholomew Jr.

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.